

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 01-0247  
Sales and Withholding Tax  
Responsible Officer  
For the Tax Period 1993-2003**

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**ISSUE**

**1. Sales and Withholding Tax-Responsible Officer Liability**

**Authority:** IC 6-2.5-9-3, IC 6-8.1-5-1(b), IC 6-3-4-8(f).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales and withholding taxes.

**STATEMENT OF FACTS**

The taxpayer was an officer of a corporation that did not properly remit sales taxes and withholding taxes to the state during the tax period 1993-2003. The Indiana Department of Revenue, hereinafter referred to as the "department," assessed the unpaid sales taxes, withholding taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

**1. Sales and Use Tax and Withholding Tax-Responsible Officer Liability**

**Discussion**

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that “In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

The taxpayer contended that he discovered two mistakes with the department’s assessments. The taxpayer provided substantial documentation to support this contention. First, the taxpayer showed that the sales tax liability for one month had actually been paid. Another month’s tax liability was actually listed under two liability numbers. Since each month’s tax liability need only be paid once, the duplicate liability must be deleted from the total assessment.

The taxpayer agrees that he was a responsible officer from the time the corporation was formed until the time he resigned his office and sold his interest in the corporation. The taxpayer provided substantial documentation that he did actually completely sever himself from association with the corporation on August 9, 1997. Therefore, he is not responsible for any liabilities due after August 9, 1997.

### **Finding**

The taxpayer’s protest is sustained as to the duplicated liability, the paid liability and the liabilities due after August 9, 1997. The taxpayer owes the remainder of the assessment, interest, and penalty.